

RAISED SENATE BILL NO. 1196

GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE

AN ACT CONCERNING THE CONVEYANCE OF CERTAIN PARCELS OF STATE LAND

My name is J. H. Torrance Downes, Senior Planner at the CT River Estuary Regional Planning Agency and staff for the CT River Gateway Commission. I am testifying in opposition to the inclusion of Section 14 of SB No. 1196 on behalf of the Gateway Commission. As testified to by the Commission's chairman, Dr. Woody, this year's opposition to the conveyance is based upon significant changes in the situation since last year's legislative session.

As Dr. Woody testified, the Gateway Commission is a statutorily-enabled conservation organization that has protected the scenic quality of the lower Connecticut River since 1973 - for the past 37 years. The Commission works in partnership with its eight member towns, which include Haddam, to protect the viewscape in the lower Connecticut River through two primary means; through the acquisition of development and scenic rights and through the outright purchase of undeveloped property in fee, and the adoption of protective zoning standards which are in turn adopted into the local zoning regulations of its member towns. In the case of the 17.40 acres that is the subject of this conveyance, the property has already been protected by virtue of the State's acquisition of the property in 2003 for \$1.35 million. The purchase of the property by the State of Connecticut was, in effect, also carrying out the mission of the Gateway Commission. Conveying the property is **contrary to** the Gateway's mission of preservation.

The Gateway Commission *again* opposes conveyance, but with caveats due to the changing circumstances to which Dr. Woody referred. Although the Gateway Commission is very concerned about the precedent of conveying conserved state land for private development, the most pressing immediate concern is the extremely premature timing of the conveyance during this year's legislative session.

The timing concern is based upon the existence of many unanswered questions including (1) a lack of any specific plans regarding what the development may include or will look like or where on the property it will be situated, (2) significant unanswered questions regarding the appraised values of the exchange properties, and (3) the existence of an ongoing and as of yet *uncompleted*

town planning effort to determine the zoning of the area within which the 17 acre parcel exists. For the Gateway Commission to reconsider its opposition to this or any other effort to convey this property at this time, these questions *must* be answered prior to conveyance of the parcel into private hands. **The conceptual nature of the development at this point is fine for discussion purposes and marketing efforts, but should not be accepted as support for the conveyance of state-owned conservation property to private developers.**

Understand that Gateway would rather not have to take a position opposing an effort supported by some officials in one of their member towns with whom they work to protect the lower river. They have been forced into this most awkward position because the property was *again* included in this year's conveyance bill against their stated wishes by bill co-sponsor Senator Eileen Daily. The reason for the Gateway's request to Senator Daily - plainly stated in a December 14, 2010 letter to the Senator, the text of which is attached to this testimony - was that between four and five members of the Gateway Commission have been collaborating with Haddam First Selectman Paul DeStefano, Haddam Town Planner Liz Glidden and Riverhouse partner Steve Rocco since shortly after the end of last year's legislative session to develop a mutually agreeable plan for how the 17 acre property may be developed. Plans of sufficient detail have not been developed, presented or agreed upon at this date in time. Any development at this conservation site must be done in a manner that protects the "*natural and traditional riverway scene*" for "*present and future citizens of Connecticut*", language found in Section 25-102a of the Gateway's enabling statutes. Without any plans, agreements or safeguards in place, such an outcome is not guaranteed.

The concern is the *order* of steps that must occur. Where the Riverhouse partners and some town officials feel that the property should be conveyed *now* WITHOUT specific plans, agreements, safeguards such as the establishment of protective scenic easements or the **completion of the ongoing planning study**, the Gateway Commission is adamant that the conveyance should only occur only *after* the completion of those efforts. **The Gateway would offer that conveying the property at this time is putting the proverbial cart before the horse.** Further, being in State ownership, the property will not change hands prior to next year's

legislative session if it is not conveyed now, so why not allow the local efforts to play through PRIOR to the conveyance?

Although the Gateway Commission has and will continue to participate in collaborations regarding the possible development of the 17 acre parcel on behalf of their member town Haddam, it is important for this Committee to know that contrary to a story that's been told, the original seller and the DEP agent who negotiated the sale of this property concur that the 17 acres was *specifically* targeted for conservation by the DEP consistent with the intent of the seller and as appears in the deed of sale. The state was not "forced" to buy the 17 acres because of an "all or nothing" deal where the property owner wouldn't sell the desired riverfront portion without the "less desirable" 17 acre portion. Where proponents have said that "*the State didn't really want that 17 acres anyway*", that is just not true. At the very least, disagreement over the original intent of the sale is yet another question that should be resolved prior to the conveyance.

Finally, it should be noted that there are no other examples of which I am aware where a property *purchased* by the State of Connecticut for conservation purposes has then been conveyed into private hands by the legislature for development purposes. It is understood that the proposed exchange of 87 acres of undeveloped land for the 17 acres is indeed a mitigating factor, but the committee should be aware that this conveyance will set a precedent that is unsettling to the Gateway Commission and to the conservation community at large, to say the least. Acquisition staff at the DEP have often said to potential land benefactors, "...*don't worry, this open space will never be developed; it would take an act of the legislature to accomplish that!*" And here we sit.

In summary, the conveyance of the 17 acres during this legislative session is premature and should only be considered in next year's legislative session if adequate safeguards are agreed upon and all concerns are vetted and resolved. Please excuse me for my candor, but the legislature would be unwise to convey this conservation parcel at this time given the existing circumstances.

Thank you for your time. If the Committee has any questions, I would be happy to answer them at this time.

December 14, 2010

Senator Eileen Daily
Legislative Office Building
Room 3700
Hartford, CT 06106-1591

SUBJECT: Conveyance of Certain Land in the Tylerville Area of Haddam

Dear Senator Daily:

At its Regular Meeting on December 2nd, 2010, the Connecticut River Gateway Commission requested that I send a letter updating you on the Tylerville partnership from their perspective.

Background

As you are aware, the Connecticut River Gateway Commission opposed the inclusion of the subject property in HB No. 5520 (enclosed herewith as Appendix A and B are the statements that Gateway Commission Chairman Melvin Woody and I read at that hearing stating the Commission's objections to the inclusion of Tylerville property in HB 5520) last year. Subsequently, Haddam 1st Selectman Paul DeStefano strongly requested that the Gateway Commission participate in meetings that would be convened in an attempt to find common ground and a solution to the issue of development of state-conserved property in the Tylerville section of Haddam. In an effort to respond to the needs of their member town, representatives of the Gateway Commission have participated since last spring in several meetings attended by DeStefano, Haddam Town Planner Liz West Glidden, Architect Steve Rocco and GW Commission Chairman Melvin Woody, Susan Bement and Derek Turner, who represent Haddam on the commission, and Haddam residents Stasia DeMichele and Raul Debrigard who represent the Midstate Regional Planning Agency. I have attended those meetings as staff to the Gateway Commission and to assist, along with Ms. Glidden, in the facilitation of that effort. Although remaining concerned about the impact of conveying conservation land for development in this visible Conservation Zone location, the Commission is committed to continuing dialogue with the parties in an attempt to find a solution that would meet all needs including those of the town's local economy, the Gateway Commission's mission, the needs of the conservation community in Haddam, the needs of the citizens of Haddam and other needs that have been expressed in the various public forums where the topic has been raised, discussed and debated.

Early Discussions

In an early discussion with Steve Rocco, Chairman Woody suggested that the interests of all concerned might be reconciled if Rocco would be willing to grant a scenic easement that would protect the view from the river, East Haddam and the Goodspeed bridge. When Rocco expressed an interest in that possibility, several members of the Gateway Commission and I met with DEP Commissioner Amey Marrella and members of her staff on June 22, 2010 to discuss whether the DEP might be amenable to some such compromise. As you no doubt recall, the DEP opposed inclusion of the Tylerville swap in HB No. 5520 and the Gateway Commission felt that they could not in good conscience negotiate with the town and Rocco's Riverhouse partnership if there were no chance at all that the DEP would agree to any compromise solution. Commissioner Marrella did not rule out the general possibility, but suggested that it could best be considered at a meeting of all the interested parties once other uncertainties are resolved, including uncertainty about the leadership of the DEP after the fall election. Reassured that the effort need not be in vain, the Commission authorized further negotiations with the town and Mr. Rocco.

Planning and Zoning Concerns: A Tylerville Village District

The Gateway Commission representatives participating in the meetings expressed a concern that, as currently zoned, the 17 acre Tylerville property can only be used for industrial purposes, most of which neither the Town nor the Gateway Commission want to see in that location (the area has long been planned for commercial uses in the Town Plan). With the urging of many, including Gateway and Haddam Planning & Zoning Commission member Stasia DeMichele, the Town has undertaken a deliberative process to study and then rezone the Tylerville area as a village commercial center, similar to that existing in the Higganum section of Haddam. Since any regulations proposed must be approved by the Gateway Commission before they can become effective, Ms. DeMichele and GW staff have participated in some of those meetings to assist in the effort and provide guidance about the standpoint of the Gateway Commission and their mission. The effort will take some time to work through given the public interest and the necessity for numerous meetings intended to reach as much of a townwide consensus as is practical. The members of the Gateway Commission believe that it is crucial to complete this rezoning effort before working out the particulars of any compromise solution to the problem of transferring the property into private hands

November 16, 2010 Meeting

In the most recent meeting of interested parties, held on Tuesday November 16, 2010 in Haddam Town Hall, Mr. Rocco presented a suggested general plan for the overall use of the 17 acres surrounding the Riverhouse property. The map included hillside areas that he proposed to place under a conservation easement, areas to be developed for retail uses, a new Goodspeed Theater and a new hotel. Although those at the meeting found the preliminary plan very helpful as a point of departure, it is not clear whether other members of the GW Commission will support the level of protection proposed. The discussions haven't reached that stage as of yet.

The plan also raised other concerns. In the course of the discussion, Mr. Rocco indicated that he still anticipates that a new Goodspeed theatre would be built on the site and said that the financial viability of the planned hotel might depend upon inclusion of the theater. However, Commission members have heard from other sources that the construction of a new Goodspeed theatre outside of East Haddam is extremely unlikely. The commission members involved think it is very important to resolve this uncertainty by direct consultation with Michael Price or representatives of the Goodspeed Foundation Board. If the conveyance of the surrounding state-owned conservation property were to occur prior to the settling of all or most aspects of this plan to the satisfaction of all participants, there will be no guarantee that the anticipated project will go forward in the form discussed to date. In that case, although it is acknowledged that any development would be consistent with approved Gateway standards and that the new zoning currently being studied by several Haddam committees would have to be approved by the Gateway Commission, it might result in state-owned conservation land being conveyed for purposes of indeterminate development that may or may not be compatible with the Gateway Commission's mandate.

Postponement of Conveyance (emphasis added by J. H. Torrance Downes, March 18, 2011)

The issue at hand, Senator Daily, is the **timing** of the inclusion of this property in any upcoming conveyance bill. Given that meetings between the partners are ongoing, given that the town is in the beginning stages of long-term planning for the Tylerville village area, and given that there are significant unresolved issues surrounding this effort that may prevent the project coming to fruition as discussed, the Gateway Commission feels that inclusion of the 17 acre Tylerville property in a conveyance bill in the upcoming legislative session would be premature. Without a completed planning and zoning framework in place and without firm and verified commitments that will assure development consistent with what has been discussed, the Gateway Commission wants all to understand that they would likely have no choice but to again oppose the transfer of this property were it to appear in a forthcoming conveyance bill. They would rather not be put in that position after investing so much time and attention in the effort to forge a compromise that could serve the interests of all concerned.

Summary

The Commission therefore asks that the Tylerville property not be placed in any upcoming conveyance bill or conveyed out of conservation for development by any other means until the parties have reached agreements on all matters associated with the property and the zoning status of the area is resolved. The view from the Goodspeed Opera House and the swinging bridge between Haddam and East Haddam is one of the most important to the general public and to tourism in the entire Gateway Conservation Zone. For the Gateway Commission to be willing to accept the loss of that existing conservation protection, they will need assurances that what is being discussed will be what comes to fruition. In that there appear to be so many "uncertainties" in a project with a complex set of circumstances and issues (including the various aspects that aren't necessarily in the control of Mr. Rocco), the Gateway Commission continues to have *tremendous* concern over the conveyance of the property prior to eliminating as many of the uncertainties as possible.

I would be glad to discuss this matter further with you – and, perhaps, members of the commission involved in the discussions in Haddam – at any time and we hope that you will participate in the final negotiations with the DEP once these preliminary uncertainties have been resolved.

Thank you for your consideration of the concerns of the Gateway Commission and your anticipated involvement in ongoing discussions common to the Town of Haddam and the Connecticut River Gateway Commission.

For the Commission,

J. H. Torrance Downes
Senior Planner, CRERPA

Copies to:

Mr. Paul DeStefano, First Selectmen, Haddam
Ms. Liz West Glidden, Town Planner, Haddam
Mr. Steve Rocco, Architect
Ms. Gail Kalison Reynolds, Chairman, Haddam Conservation Commission
Dr. Malcolm Gorin, Chairman, Haddam Planning & Zoning Commission
Dr. Melvin Woody, Chairman, Gateway Commission
Mr. Raul Debrigard, Midstate Representative to the Gateway Commission
Ms. Stasia DeMichele, Midstate Representative to the Gateway Commission
Ms. Susan Bement, Gateway Commission, Haddam
Mr. Derek Turner, Gateway Commission, Haddam
Mr. David Blatt, Commissioner's Representative to the Gateway Commission
Mr. James Spallone, 36th District, State Representative

APPENDIX A

Committee on Government Administration and Elections

An Act Concerning the Conveyance of Certain Parcels of State Land

Raised Bill No. 5520

Testimony Submitted by Staff of the Connecticut River Gateway Commission, March 19, 2010

Mr. and Madam Chairmen and members of the Committee, thank you for the opportunity to present testimony on behalf of the Connecticut River Gateway Commission regarding Raised Bill No. 5520. Although I usually don't read my testimony before legislative committees, I will do so here because of the importance of this testimony.

My name is J. H. Torrance Downes, Senior Planner with the Connecticut River Estuary Regional Planning Agency, one of 15 regional planning organizations in the State and Primary Staff for the Connecticut River Gateway Commission. My testimony is presented on behalf of the CT River Gateway Commission. My job in testifying is to establish for the record who the Gateway Commission is, state its mission in protecting the "*natural and traditional riverway scene*" and to briefly describe the methods in which the Commission is authorized to pursue its mission. You will also hear testimony from the current Chairman of the Gateway Commission, Dr. Melvin Woody, a member of the Commission since its inception in 1973 – over 37 years. Dr. Woody will testify as to the Gateway Commission efforts in its preservation mission and provide the Commission's position regarding Raised Bill No. 5520. It is noted for the record that the Gateway Commission derives its substantial authority from Sections 25-102a through 25-102s of the Connecticut General Statutes.

The Gateway Commission has been in existence since 1973 and came out of a failed Federal effort to establish a recreational/conservation National Park along the entire 410 mile length of the Connecticut River from Canada to the mouth of the river at Long Island Sound. Although the federal effort was eventually abandoned as a result of state opposition in all four states through which the Connecticut River passes (Vermont, New Hampshire, Massachusetts and Connecticut), insightful residents in the lower Connecticut River valley saw the importance of protecting the lower river, especially from the standpoint of the visual protection of the "*natural and traditional riverway scene*".

The Gateway Commission is a regional "compact" that includes as its members the eight towns along the river from Haddam and East Haddam south to Old Saybrook and Old Lyme at Long Island Sound. Section 19 of Raised Bill No. 5520 includes the proposed conveyance of a 17 acre parcel from the Connecticut Department of Environmental Protection to a private developer adjacent to the Connecticut River in Haddam. The proposed conveyance referred to in Section 19 of Bill 5520 occurs within the "Gateway Conservation Zone", the area within which the Commission has its authority. The Conservation Zone, defined in Section 25-102c CGS, is best described as that area which can be seen when looking from the river up to the first ridge.

Section 25-102a CGS describes the mission of the Gateway Commission as established by the General Assembly:

Public interest in lower Connecticut River. It is found that the lower Connecticut River and the towns abutting the river possess unique scenic, ecological, scientific and historic value contributing to public enjoyment, inspiration and scientific study, that it is in the public interest that the provisions of this chapter be adopted to preserve such values and to prevent deterioration of the natural and traditional riverway scene for the enjoyment of present and future generations of Connecticut citizens and that the

powers of the Commissioner of Environmental Protection, conferred by the provisions of section 22a-25, should be exercised in the furtherance of the purposes hereof in conformity with his general responsibility to preserve the natural resources of the state.

The legislative mission of preventing the deterioration of the "*natural and traditional riverway scene*" in this highly celebrated river cannot be understated. With awards such as the environmental designations of the international Ramsar Treaty as a "Wetlands of International Significance", one of "40 Last Great Places" by The Nature Conservancy, the establishment of the "Silvio Conte Wildlife Preserve" by the U.S. Fish & Wildlife Service and the national designation of the Connecticut as one of fifteen "American Heritage Rivers" in the entire United States, clearly the river is of great importance, not only from an ecological point, but from a scenic and economic perspective as well.

The Gateway Commission is authorized by statute to protect the viewshed of the lower Connecticut River in two primary manners:

- (1) through the establishment and adoption of development standards that are adopted into the Zoning Regulations of each of the eight member towns, and
- (2) acquisition of properties, either in fee or through conservation easement.

First, the standards of the Gateway Commission, which include rules governing building footprints, building heights, setbacks and the clearing of trees, endeavor to manage development with an eye toward having what is primarily residential fit the land with a minimum of visual impact rather than disrupting the landscape to fit a particular architectural design. This includes minimizing the removal of visually buffering trees. Second, the Commission is authorized to purchase or receive donations of land within the Conservation Zone for the purpose of open space preservation, which in turn, preserves the "*natural and traditional riverway scene*".

Since 1973, the Gateway Commission has either acquired, or participated in the acquisition of, over 1000 acres of conservation land within the Conservation Zone, spending more than \$1,000,000 of their own funds. Clearly, the Commission puts their money where their mouth is when it comes to their mission of preservation. This second method of carrying out its mission is where the concern over Raised Bill No. 5520, Section 19 is found.

With respect to the 17 acre, CTDEP-owned parcel that would be conveyed for development purposes, the initial acquisition of this land for conservation purposes by the State of Connecticut for over \$1.3 million is an unavoidable indication that there appeared to be an important reason for such a decision. The State does not spend that kind of money without a complete and exhaustive record substantiating the purchase.

Further, the recorded deed for the property states that the 17-acre parcel, "*a prime natural feature of the Connecticut landscape, has high priority recreation, fishery, and conservation value, and is consistent with the state's comprehensive plan for outdoor recreation and the state plan of conservation and development, and should be retained in its natural scenic or open condition as park or public open space* [emph. added] . . .". In the face of this verbiage, returning this "*prime natural*" parcel to development appears directly opposed to its original conservation purpose.

The crux of the matter that is the subject of Section 19 of Raised Bill No. 5520 is threefold:

- (1) There is great concern over returning 17 acres of any visible Conservation Zone land from protected open space back to developable land, especially when an effort was made by the State of Connecticut to preserve it in the first place.

- (2) Removing protected open space from the Gateway Conservation Zone and replacing it with open space that is NOT within the Conservation Zone, as is the case in this conveyance, is a net loss to that "*natural and traditional riverway scene*" from the perspective of the Gateway Commission and its statutory mission.
- (3) Even if development under these specific set of circumstances is seen as acceptable and beneficial by some measures, significant concern *still* exists over potential ramifications to conservation organizations such as the Gateway Commission who depend upon donations of land to pursue their preservation missions. **If those who donate land for conservation purposes can not trust that their donations will *remain* in conservation "in perpetuity", they may not donate the land in the first place. There MUST be confidence that, when land is donated for conservation purposes, it won't end up being sold or traded for development at sometime in the future, no matter HOW good the intentions are.** In the early days of the Gateway Commission's work, they ran into just this sort of skepticism, so this is not a speculative issue.

In summary, although there may be some specific community benefits to this particular conveyance, it is incumbent upon this committee to consider the broader implications of conveying conservation land owned by the State of Connecticut for development. Not only would this action run counter to the State Plan of Conservation and Development (which was cited as a reason for the State's purchase of this land for conservation in the first place), it sends a message to the general public that, no matter what is represented, donated conservation land could ultimately be returned to development when circumstances suit. Such an action is a threat to conservation efforts statewide.

In addition, removing a substantial and highly visible piece of open space located within the Gateway Conservation Zone from conservation is in direct opposition to the 37-year Connecticut River Gateway Commission statutory mission to prevent the deterioration of the "*natural and traditional riverway scene*" for present and future residents of the State of Connecticut. The Gateway Commission believes that every preserved parcel is important to their mission; they are already keenly sensitive to the consequences inherent in the "cut of one thousand knives".

Thank you for the opportunity to present testimony on behalf of the Connecticut River Gateway Commission. If you should require any additional information, please contact me, J. H. Torrance Downes at 860-388-3497 or jhtdownes01@yahoo.com.

I am available for questions.